



November 17, 1999

Mr. Robert J. Gervais  
Assistant City Attorney  
City of Galveston  
Legal Department  
P.O. Box 779  
Galveston, Texas 77553-0779

OR99-3297

Dear Mr. Gervais:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129472.

The Galveston Police Department (the "city police department") received an open records request for "copies of all disciplinary action and citizen complaints against Galveston Police officers since July 1, 1995." You state that some responsive information will be released to the requestor. However, you contend that records pertaining to complaints against police officers that did not result in disciplinary action are confidential under section 143.089 of the Local Government Code and therefore must be withheld from the public pursuant to section 552.101 of the Government Code.<sup>1</sup> We have reviewed the documents you have submitted and have considered the exception you claim.

Section 143.089 of the Local Government Code provides in pertinent part:

(a) The director [of the police officers' civil service] or the director's designee shall maintain a personnel file on each . . . police officer. The personnel file must contain *any* letter, memorandum, or document relating to:

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<sup>1</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

(2) any misconduct by the . . . police officer if the letter, memorandum, or document is from the employing department and *if the misconduct resulted in disciplinary action* by the employing department in accordance with this chapter.

(b) A letter, memorandum, or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to sustain the charge of misconduct.

....

(g) A . . . police department may maintain a personnel file on a . . . police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a . . . police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the . . . police officer's personnel file. [Emphasis added.]

In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel file information maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the creation of two personnel files for police officers: One that is maintained by the city's civil service director and the other by the city police department.

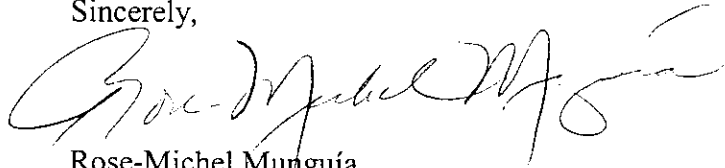
Information contained in personnel files held by the civil service director, including all records relating to misconduct by police officers that resulted in disciplinary action, must be released to the public unless the information comes within one of the Public Information Act's exceptions to required public disclosure. Because the records before us pertain to complaints that did not result in disciplinary action, they appear to be from the departmental file held by the city police department and as such are made confidential under section 143.089(g) of the Local Government Code. Consequently, the city police department may not release these records to the requestor. *See also City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied).

In addition, you state that the log you have submitted for review contains the entries of complaints that did not result in disciplinary actions. You claim that the log is confidential

under section 143.089(g) and excepted from disclosure. You state that it is kept "physically separate from the departmental files [and] the log acts as a central index to all complaints found in the individual departmental files and contains information related to the complaints." Section 143.089 of the Local Government Code pertains solely to information contained in personnel files of police officers. It does not contemplate information that is not contained within the personnel files. Therefore, the log is not excepted from disclosure and it must be released.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Rose-Michel Munguia", written over a horizontal line.

Rose-Michel Munguia  
Assistant Attorney General  
Open Records Division

RMM/jc

Enclosures: Submitted documents

cc: Mr. Marty Schladen  
Galveston County Daily News  
8522 Teichman Road  
Galveston, Texas 77554  
(w/o enclosures)